

MT LEGISLATIVE HISTORY

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Chapter 325 1991

Bill H _____ S 84

Original bill & hist. /C

H. Committee on Education & Cultural Resources S. Committee on Education & Cultural Resources

Hearing Date(s) Mar 14 /C

Hearing Date(s) Jan 23 /C

Mar 19 /C

Jan 30 /C

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_____ C

Date Out Mar 20 /C

Jan 31 /C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

SB 84

SENATE FINAL STATUS

1/30	2ND READING PASSED	48	0
1/31	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/01	FIRST READING		
2/01	REFERRED TO FISH & GAME		
2/07	HEARING		
2/09	COMMITTEE REPORT—BILL CONCURRED		
2/11	2ND READING CONCURRED	88	11
2/12	3RD READING CONCURRED	88	8
	RETURNED TO SENATE		
2/19	SIGNED BY PRESIDENT		
2/20	SIGNED BY SPEAKER		
2/20	TRANSMITTED TO GOVERNOR		
2/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 41		
	EFFECTIVE DATE: 1/01/92		

SB 84 INTRODUCED BY JACOBSON, ET AL.
PROHIBIT CORPORAL PUNISHMENT OF STUDENTS

1/14	INTRODUCED		
1/15	FIRST READING		
1/15	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/23	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED	32	18
2/02	3RD READING PASSED	29	19
	TRANSMITTED TO HOUSE		
2/04	FIRST READING		
2/04	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/14	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	67	26
3/25	3RD READING CONCURRED	63	32
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 325		
	EFFECTIVE DATE: 4/04/91		

SB 85 INTRODUCED BY ECK
CLARIFY TAX EXEMPTION FOR CHARITABLE INSTITUTIONS
BY REQUEST OF DEPARTMENT OF REVENUE

1/15	INTRODUCED		
1/15	FIRST READING		
1/15	REFERRED TO TAXATION		
1/18	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/07	2ND READING PASSED	49	0
2/08	3RD READING PASSED	43	0
	TRANSMITTED TO HOUSE		
2/09	FIRST READING		
2/09	REFERRED TO TAXATION		
2/19	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	99	0
3/12	3RD READING CONCURRED	97	0
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/18	TRANSMITTED TO GOVERNOR		

SENATE BILL NO. 84

INTRODUCED BY JACOBSON, BIANCHI, BLAYLOCK, MANNING,
DOHERTY, TOWE, FRANKLIN, YELLOWTAIL, VAN VALKENBURG,
LYNCH, VAUGHN, ECK, WATERMAN, DARKO, STICKNEY, COHEN,
MCCARTHY, BROOKE, WYATT, KADAS, REAM, BACHINI, L. NELSON,
RANEY, HANSEN, SQUIRES, BARNHART, SCHYE, WANZENRIED, S. RICE,
BRADLEY, RUSSELL, HARPER, J. BROWN, HARRINGTON, O'KEEFE,
DRISCOLL, MEASURE, STRIZICH, DAVIS, COCCHIARELLA, TOOLE,
CONNELLY, J. JOHNSON, PAVLOVICH, KIMBERLEY, COBB

IN THE SENATE

JANUARY 14, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON EDUCATION & CULTURAL RESOURCES.

 FIRST READING.

JANUARY 31, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 1, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 2, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 29; NOES, 19.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON EDUCATION & CULTURAL RESOURCES.

 FIRST READING.

MARCH 20, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 23, 1991 SECOND READING, CONCURRED IN.

MARCH 25, 1991 THIRD READING, CONCURRED IN.
AYES, 63; NOES, 32.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 25, 1991

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 84

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT A PERSON EMPLOYED OR ENGAGED BY A SCHOOL DISTRICT FROM INFLECTING

CORPORAL PUNISHMENT ON A PUPIL; TO DEFINE CORPORAL

PUNISHMENT OF PUPILS; TO CLARIFY SITUATIONS IN WHICH A

PERSON WHO IS EMPLOYED OR ENGAGED BY A SCHOOL DISTRICT MAY

USE PHYSICAL RESTRAINT ON A PUPIL; TO PROVIDE A FINE FOR

UNREASONABLE OR UNNECESSARY PHYSICAL RESTRAINT; AMENDING

SECTION 20-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE

DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-4-302, MCA, is amended to read:

"20-4-302. Power-of-teacher-or-principal-over-pupils---

undue Discipline and punishment of pupils -- definition of

corporal punishment -- penalty. (1) Any A teacher or

principal shall--have has the authority to hold any a pupil

to a strict accountability for any disorderly conduct in

school, on the way to or from school, or during intermission

or recess. Whenever-a-principal-shall-deem-it-necessary-to

inflict-corporal-punishment-in-order--to--maintain n-orderly

conduct--of--a--pupil;--he--shall--administer--such-corporal

punishment without-undue-anger-and-only-in-the-presence-of-a

witness--Before-any-corporal-punishment-is-administered,-the
parent-or-guardian-shall--be--notified--of--the--principal's
intention--to--so--punish-his-child,-except-that-in-cases-of
open-and-flagrant-defiance-of-the-teacher,-principal,-or--of
the--authority--of--the-school,-the-teacher-or-principal-may
administer-corporal-punishment-without-giving-such-notice.

(2) For the purposes of this section, "corporal
punishment" means the willful infliction of physical pain on
a pupil as a disciplinary measure.

(3) A person who is employed or engaged by a school
district may not inflict or cause to be inflicted corporal
punishment on a pupil.

(4) (a) A person who is employed or engaged by a school
district may use physical restraint on a pupil as is
reasonable and necessary to:

(i) quell a disturbance;
(ii) provide self-protection;
(iii) protect the pupil or others from physical injury;
(iv) obtain possession of a weapon or other dangerous
object on the person of the pupil or within control of the
pupil; or

(v) protect property from serious harm.
(b) The use of physical restraint may not be construed
to constitute corporal punishment within the intent of this
section.

1 ~~{2}~~(5) Any A teacher in a district not employing
2 neither a district superintendent or nor a principal of at
3 the school where the teacher is assigned ~~shall-have~~ has the
4 authority to suspend a pupil for good cause and---to
5 administer corporal punishment in the presence of a witness,
6 without---undue---anger. Where When either a district
7 superintendent or a school principal is employed, only the
8 superintendent or principal ~~shall-have~~ has the authority to
9 suspend a pupil for good cause. Whenever a teacher suspends
10 a pupil, he the teacher shall notify the trustees
11 immediately of such the action.

12 ~~{3}~~(6) It shall be the duty of any A teacher has the
13 duty to report the truancy or incorrigibility of any a pupil
14 to the district superintendent, the principal, or the
15 trustees, whichever is applicable.

16 ~~{4}~~(7) Any--teacher--or principal who shall maltreat or
17 abuse--any--pupil--by--administering--any--undue--or--severe
18 punishment shall be deemed If a person who is employed or
19 engaged by a school district uses more physical restraint
20 than is reasonable or necessary, the person is guilty of a
21 misdemeanor and, upon conviction of such the misdemeanor by
22 a court of competent jurisdiction, shall be fined not less
23 than \$25 or more than \$100 \$500."

24 NEW SECTION. Section 2. Effective date. [This act] is
25 effective on passage and approval.

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator Chet Blaylock on January 23, 1991. at
1:00 P.M.

ROLL CALL

Members Present:

Chet Blaylock, Chairman (D)
Harry Fritz, Vice Chairman (D)
Robert Brown (R)
Bill Farrell (R)
H.W. Hammond (R)
Dennis Nathe (R)
Dick Pinsoneault (D)
Mignon Waterman (D)
Bill Yellowtail (D)

Members Excused: None

Staff Present: Eddye McClure (Legislative Council).

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: Senator Blaylock reminded all those
who wished to testify to fill out the witness statement.

HEARING ON SENATE BILL 84

Presentation and Opening Statement by Sponsor:

Senator Judy Jacobson, Senate District 36, stated she wished to approach this with the attitude of whether or not corporal punishment is needed in the schools any longer. Physical abuse is banned in prisons, psychiatric hospitals and military schools, and many parents feel a method of "time out" is more effective than physical means. She stated that there are very few places where inflicting pain is an acceptable disciplinary method. According to Sen. Jacobson, schools in Montana stand out as an example, an exception she would hope the committee would choose to eliminate. Virtually every state permits teachers to use force to protect themselves or restrain a violent child whose behavior is a threat to the teacher, to other children or to themselves. This bill permits it. She stated she does not believe corporal punishment is effective. Years of

research by the National Parent Teacher Association has led them to conclude that instead of curbing violence, corporal punishment teaches children to use violence to solve problems. At best, such discipline depresses such behavior temporarily; however, in the long term it may increase it. Corporal punishment lets students "off the hook" by not requiring them to take responsibility for their actions. It does not teach students how to judge between right and wrong behavior, and has a negative effect on students' ability to learn or concentrate by humiliating them and providing no motive to learn. A clearly laid out disciplinary plan at the beginning of an academic year which students can understand and respect and agree to abide by would be a far more positive approach. If pre-school children can understand "time out" and its rules and consequences, surely school age children can understand school rules and their consequences. Ms. Jacobson believes that the most effective discipline in all areas of human interaction is rooted in fairness, in justice and concern for individual rights.

Proponents' Testimony:

ELLEN BOURGEOU, Legislative Coordinator for the Montana Congress of Parents and Teachers, stated she welcomed the opportunity to address this Committee on behalf of the PTA which is the largest child's advocacy organization in the state, and whose parent organization is the largest child's advocacy group in the nation. She read and presented copies of her testimony to Committee members (Exhibit #1). Ms. Bourgeau urged passage of SB 84.

KAY MCKENNA, representing the County School Superintendents, stated that group is in support of SB 84. As a teacher and an administrator for several years, she knows of no instance where slapping or hitting a child had an effect on inappropriate behavior of children. She advised she has some concerns regarding the bill, one of which regards the definition of corporal punishment (page 2). She feels the definition should be more specific regarding such things as hitting, spanking, paddling. It is her belief many teachers heartily disagree with any kind of corporal punishment, but she is speaking of hitting and spanking situations. Her other concern comes on page 3, which addresses the situation where teachers are in charge because the school may not have an administrator. She wished the wording to be modified to "the teacher shall notify the trustees and the County Superintendent" and the same wording to be included in line 15. She concluded by stating the County Superintendents would support any bill that would oppose corporal punishment.

PHIL CAMPBELL, representing the Montana Education Association, advised that this group supports SB 84. They believe it is good public policy for the state to have a law which dictates that physical pain not be intentionally inflicted on students. As an organization they are concerned about how

teachers and other employees are affected by this bill, but he believes there are other ways of disciplining students. He added that he believes the bill is drafted in such a way that it addresses the concern expressed by Ms. McKenna. The bill states that the use of physical restraint may not be construed as corporal punishment, and he feels the language of the bill will take care of that concern. The bill has been carefully reviewed because of the impact it will have on their teacher members across the state, and he believes the bill will meet the test that allows reasonable physical restraint to happen while at the same time a law will be in effect to prohibit intentional infliction of pain. He noted that the fines are also changed. He believes the bill was drafted to allow the kind of discipline that is necessary, and he urged support of SB 84.

JUDITH CARLSON, representing the Montana Chapter of National Association of Social Workers, stated that their chapter strongly endorses SB 84, and urged it to be passed into law. She stated that 90% of corporal punishment is inflicted by only 5% of educators. Social workers are involved in the investigation of abuse and neglect of their children by parents; other social workers are involved in the treatment of children who have been victims of abuse. They see that corporal punishment can inflict harm on the child, both physical and mental. She reiterated their support of SB 84. (Exhibit #2)

JIM SMITH, Montana Residential Child Care Association, stated he wished to express that group's strong support of this bill. He advised that their understanding of the distinction between corporal punishment and physical restraint is identical to the description by Mr. Campbell, and it is the distinction that professionals in Residential Child Care facilities must maintain and use in their treatment and care of children who are placed in that type care.

ALAN NICHOLSON stated he is a parent and member of the State Board of Public Education but is not testifying on behalf of the Board as the Board does not take a position. He stated he is in favor of the bill, and against corporal punishment. He believes that in some cases it might work, but the cost of its working is too much to pay as it teaches children to comply to arbitrary authority and to perceive the veil of threat as an appropriate measure to change behavior. He stated he hopes the committee does not kill the bill again.

DEBRA KEHR, vice-chairman of the Helena School Board, advised that she is representing that Board. She informed that in later testimony the committee would learn that the Montana School Boards Association opposes this bill. However, she indicated that opposition is far from unanimous among the membership. The Helena School Board feels that if it is necessary to strike a child to maintain control in a school, then the school is already out of control.

PAULETTE KOHMAN, Executive Director, Montana Council for Maternal and Child Health, advised that their Council is made up of health professionals. She advised that they are in support of SB 84 and wished to resist the corporal punishment of children in school. She pointed out that all nations have outlawed corporal punishment but three - South Africa, the Australian outback, and the United States. In regard to the drafting of the bill, she suggested that on line 19, page 3, the words "corporal punishment or" be inserted before "more physical restraint". She provided additional testimony in written form which she presented to the committee (Exhibit #3).

GAIL GRAY, representing the Office of Public Instruction, stated she wished to voice support of SB 84. She advised that corporal punishment of children interferes with the process of learning and the optimal development of socially responsible adults. She feels it is important for those concerned with the emotional and physical health of children and youth to support the adoption of alternative methods for control and responsible behavior development in children and adolescents. Corporal punishment is counter productive; interferes with the learning environment, and teaches children that hitting is an acceptable way to solve problems. The Superintendent of the Office of Public Instruction urges support of SB 84. She indicated they would work with educators across the state in the development of alternatives to corporal punishment.

JUDY GARRITY, representing Montana Children's Alliance, stated that their group is in strong support of abolishing corporal punishment in the schools and has included this issue in the 1991 Children's Agenda. The Agenda has in turn been supported by 47 other organizations, so there is wide support for this bill. She stated that in recent years information is available that substantiates that corporal punishment is not only ineffective but is counter productive. She informed that corporal punishment occurs more frequently in the primary and intermediate levels. Boys are also hit more frequently than girls, which socializes them to be more physically aggressive than females. Poor white children and minority children are four to five times more frequently hit than middle and upper class white children, which underscores the message that those who are in power positions have the right to physically abuse those who are not. There is evidence that corporal punishment breeds resentment and vindictiveness and is the cause of school vandalism. She stated we need to raise children to be healthy, caring and thinking individuals so they can take their places as productive and law abiding citizens tomorrow. She concluded by urging the abolishment of corporal punishment in Montana.

BRUCE MOORE, representing the Montana School Boards Association, stated he wished to stress they do not have a position opposed to this bill, nor do they have a formal resolution coming from their organization supporting this bill. He stated they were glad of the clarification on the use of

restraint. He stated it is also important to recognize that teachers and trustees in the state of Montana are doing a good job of educating youngsters in the state of Montana. The Association would not want this bill construed as being an answer to a serious problem, since they do not believe a serious problem exists.

CYNTHIA BUEHL stated she is representing herself as a concerned citizen, and she is also a member of the Montana Association of School Psychologists, an organization which has taken a stand against corporal punishment in the schools. She stated when she spoke before this Committee two years ago, much of her testimony was directed towards presenting evidence about the problems and solutions concerning corporal punishment. She stated there is evidence that various forms of corporal punishment are harmful to children, ultimately do not work, and have no place in our schools. However, the use of corporal punishment has continued in our schools, which shocks some Montanans while others are all too familiar with the practice. Much of the corporal punishment used in the schools is more the legally permitted penalty administered by the principal in front of a witness. While this is preferable to corporal punishment administered in anger, it still poses problems. Among these problems is corporal punishment is not a blind justice. Research very clearly shows that it notes racial, social and gender differences. There is a disproportionate number of minority boys who receive corporal punishment. Children in crises are especially vulnerable to the negative effects of corporal punishment. Institutional abuse by compounding the abuse they are experiencing in their environment is enough to push some children over the edge into hopelessness and helplessness, perhaps becoming suicidal or rebellious. These same high risk children because they often misbehave in school, are the most likely to receive that corporal punishment. A further problem is that by allowing any form of corporal punishment in our schools, we give a message that it is an acceptable practice. Some individuals interpret this as a green light for their own use of corporal punishment. She gave examples of such use, including "blood runs" wherein the members of the losing team are required to run a certain number of laps up and down the gym, which is relatively easy for some but torturous for others. She stated that educators, as experts in child development, have a role in setting an example. They have an obligation to encourage the most effective advancements in child management. However, educators are as human as any segment and some need the impetus of a law such as proposed by this bill to abolish corporal punishment. She stressed that many good alternatives are available. In classrooms where there is an atmosphere of mutual respect, the effectiveness of teachers and students is at a maximum, thus reducing the need for corporal punishment. She concluded by stating that corporal punishment is harmful and has no place in our schools. She urged support of the bill.

ANN GILKEY, representing the Department of Family Services, advised that the Department strongly supports SB and the prohibition of corporal punishment of any pupil by a person employed by a school district. She read and furnished written testimony to the committee (Exhibit #4).

SCOTT CRICHTON, Director of the American Civil Liberties of Montana, stated they support SB 84. He furnished written testimony setting forth three basic reasons why they support this bill. Copies of the testimony were furnished to the committee members (Exhibit #5).

TERESA REARDON, representing the Montana Federation of Teachers, stated they feel it is an important bill which will protect both the teacher and the student. She urged support of SB 84.

EILEEN MORGAN, School Psychologist working in Helena, stated she is appearing on behalf of the Montana Association of School Psychologists. She related examples of how violence that is modeled can have impact on more students than just the one who has been disciplined physically. In many cases students who lost interest in going to school were found to have a fear of going to school because of witnessing physical discipline. She stated there is little research to say that physical discipline has positive effects. She encouraged the committee to support SB 84.

Opponents' Testimony:

ROBERT AUMAUGHER, Superintendent, Evergreen School District, Kalispell, stated that he believed everyone in attendance at this hearing was an advocate of kids. He stated that he believed those who speak in opposition to the bill care about students, and have dedicated their lives to helping youngsters. To provide quality education today quality teachers are needed, and this is a concern of his. He sees very little resemblance of education today as compared to 1966. He sees declining student effort, declining discipline, and a lack of parenting skills throughout his school district. It is his belief that things are getting worse in the area of student conduct and attitude. Few events concern an educator more than being prosecuted for action on their part. According to Mr. Aumaugher, SB 84 is not just a "spanking" bill. He stated in Evergreen School District, they do not spank children, nor do they hit children and do not plan to do so in the future. Anyone in their school district who does will face possible termination. He stated he wished to echo the same concerns as noted earlier. He stated approximately 85% of parents would support a teacher's action of intervening, but he is concerned about the small minority of parents who have axes to grind. He related a personal incident wherein he took a student by the arm and made him go to the end of the line since he was poking another child in the lunch line. He said he is gravely

concerned about what can be defined as infliction of pain. He reiterated that spanking or striking children is not an issue, but protection of teachers for doing what they deem to be necessary at times is of concern. He stated he hopes this committee would consider these points very carefully before adopting the legislation as written. He furnished copies to the committee of a letter from the Evergreen Education Association (Exhibit #6).

BERNARD ROSLING, Superintendent, Somers Public Schools, advised that he was recently standing in a hallway disciplining a child. A child in the sixth grade came at him, and a counselor coming down the hall stopped the child from hitting him. The question his staff has regarding SB 84 is determination of the term "reasonable and necessary". His staff of 25 teachers are very concerned about the wording. He submitted written testimony setting forth their position and concerns (Exhibit #7).

BOB SMITH, Elementary Principal at Columbia Falls, stated that he is not opposed to the abolishment of corporal punishment. He stated in his experience as a principal he is convinced they can operate well without it. However, he is concerned about the wording of the bill and what it does to the staff members who work day after day with children who are harder than usual to handle. He related an incident where a child decided he would not spend any time talking to the principal in his office, and Mr. Smith stopped him and sat him back down. His parents were upset with the principal for doing that. He believes SB 84 would leave situations like that wide open for legal ramifications. He stated he believes there are already laws to prevent slamming children against walls or similar physical action. He added he would like a little more time spent at the School Board level across Montana discussing this bill.

Questions From the Committee:

Senator Pinsoneault asked where the word "willful" came from. Mr. Campbell stated it came from a model draft of state law. He stated he questioned the wording at one time and wondered why it was not "intentional".

Senator Pinsoneault stated that the criminal code uses "purposely" and "knowingly", and those are defined in the criminal statutes. He stated he would not support this bill as it is written, but with some modifications he possibly could. He added he would be happy to work on the wording.

Senator Brown noted that the proponents suggested that corporal punishments does not solve problems but leads to psychological problems. He asked if the "blood run" would be in violation of the bill as it reads today. Ms. Morgan stated the point she was making in her testimony where she referred to the "blood run" was that as the law stands corporal punishment is legal in our schools, which gives some people a sense that it is

okay to inflict corporal punishment.

Senator Brown stated he believes they need some specific examples to show the need for this legislation. He wondered if anyone at the hearing had examples that could be illustrated. Sen. Jacobson stated that most of the examples that were used two years ago were clearly against the law as it presently stands on the books. What is being suggested is that there are better methods for disciplining children that work more effectively in the long run. She stated if it is not used at Pine Hills, why would it be needed in the schools. She stated that we should go forward with more positive methods which research has shown are more effective in the long run.

Senator Brown stated that what they have heard today is vague philosophy - nothing concrete that would make him think that a reasonable person ought to change the statute. He believes that it should be shown that when the statute was complied with, it resulted in all the psychological problems that are being claimed. Sen. Jacobson responded that there has been research done by the National PTA which indicates this is not a constructive form of punishment for children. Senator Brown further stated that the example of a teacher pushing a child against a wall is obviously in violation of the current law. Sen. Jacobson agreed. Senator Brown added that the testimony today gave examples that anyone with good judgement in the education field would never dream of doing. He did not believe enough evidence was presented to indicate the law should be changed, and stated that was apart from the things the administrators from his part of the state had brought up about the vagueness of the language and the possible jeopardy it might place teachers and principals in if some clarifying amendments are not included.

Sen. Jacobson further stated that she believes what was demonstrated here today is that there clearly are a majority of groups dealing in this field who want this legislation. She said what she has heard from those in Sen. Brown's area is that they have a particular concern, not with banning corporal punishment, but with making certain that the kinds of restraint that are needed in schools to maintain discipline are clearly laid out in this bill. This bill was drafted two years ago with a broad cross section of people drafting this legislation. She stated that perhaps Senator Pinsonneault has better language to define corporal punishment. She said all the groups that testified indicated there is a need to go in another direction. She believes the need has been established and the issue has to be looked at.

Sen. Brown further commented that the testimony today came from professional people, experts in the field of child psychology, but he does not feel the voice of the people has been heard on this particular legislation. He stated that he believed the testimony today was a minority viewpoint, even though it was

well represented at the hearing.

Sen. Jacobson disagreed, adding that PTAs across the state and other groups support the bill. She said they have tried to have a broad section of people working on the bill who represent the people of Montana. She said she has no problem with the language of the bill being tightened, but she felt the state of Montana should go forward and start using more effective methods of discipline in the schools.

Senator Hammond stated that he guessed 90% of the people who gave testimony lived in Helena. He asked for a show of hands of people who lived in Helena, and commented that it is kind of a town meeting as far as the proponents are concerned. He advised that perhaps this should be taken care of in the local school boards.

Senator Pinsoneault stated this bill is intimidating to a teacher. He asked why there is a punitive section in the bill. Mr. Campbell stated that a lot of people are purporting to represent teachers. He stated his group (MEA) has 8,500 members. Their policy making body of their organization meets once a year, with 1 representative for every 25 members. They pass the policy to go on record. He stated he had a hand in drafting the bill, and indicated there is already a punitive measure in the law now. The only change in that section changes the amount of the fine. He gave an example of a teacher restraining a student from leaving the classroom because of a disturbance. It is his feeling that had this bill been enacted at that time, and where it clearly states that the use of physical restraint is not corporal punishment, it would have helped that particular teacher. With the new law, if there is a challenge, then it would be a criminal assault charge and the parents would have to decide to make that charge. He added that in an organization of that size, there would never be 100% agreement on all issues; however, the majority of their group supports this legislation.

Senator Blaylock asked Mr. Aumaugher to refer to page 2, section (4)(iii) and questioned whether that language would protect him or any teacher in a situation similar to what Mr. Aumaugher described in his testimony. Mr. Aumaugher replied in the negative, stating that what he did had nothing to do with protecting the pupil from physical injury. He gave another example of a parent accusing a teacher of clawing a child down the face. The mother wanted the teacher fired, and was not at all satisfied with the action of a letter of reprimand. With this legislation, he feels sure that parent would have gone to court. Senator Blaylock referred back to the original incident in question and inferred that the one child was being protected from the other child through the teacher's action. Senator Blaylock also asked if the incident was reported in the Daily Inter Lake, and also asked Mr. Rosling if the incident he related was reported in the Inter Lake. Both replied that they had stated "if" it appeared, rather than it "did" appear.

Senator Hammond asked if they were concerned at all about punishment that creates mental anguish. He stated in his experience he saw teachers who used all sorts of disciplinary processes which created a great deal of mental anguish, yet no one seems too concerned about this. He stated that if you take away the possibility of there being any kind of corporal punishment, mental anguish would be increased. Ms. Buehl stated she did not think that was necessarily true. She agreed that this bill would not eliminate verbal abuse that could cause difficulties for students. Implementing this bill would give a strong message from the state to encourage other methods of discipline in the school, and to include more training for teachers, and to put more pressure on local school boards and administrators to ensure that is not happening within their schools.

Senator Hammond suggested that people who are successful in handling children from the personality standpoint can do much more than those trained to handle them. She replied that some people have personal characteristics that can make them be more positive, but some people can be trained. Teaching is an art, but it also consists of learned skills. By training, some teachers can become a more effective disciplinarian.

Ann Gilkey stated she wished to address that question. She stated she has many years in the field of residential child care, and in the course of her experience she has trained people to work with the children. Although a certain amount of talent is helpful, it is not the only requisite. A non-talented person can acquire skills. With the adoption of this law, pressure would be put on to provide the training for people to acquire the skills.

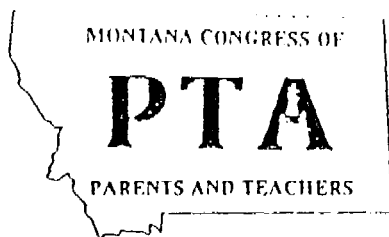
Closing by Sponsor:

Senator Jacobson stated she wished to stress there are very few places where inflicting pain is an acceptable disciplinary method. According to Senator Jacobson, schools in Montana stand out as an exception. She hopes to eliminate that exception.

EXECUTIVE ACTION ON SENATE BILL 84

Discussion:

Senator Blaylock stated that in view of the fact that a number of questions arose regarding SB 84, some of which are technical, he would like to get some suggested changes between the different parties. These changes could then be adopted or rejected, and then action be taken on the bill. He suggested using Eddy McClure, Legal Counsel; Senator Pinsoneault, and Phil Campbell, MEA, and sponsor Senator Jacobson to work on it. They agreed to so.



TESTIMONY S. B. 84

Senate Education Committee

SENATE AGRICULTURE
EXHIBIT NO. #1
DATE 1/23/91
BILL NO. SB 84

Chairman Blaylock and members of the Senate Education Committee

I am Ellen Bourgeau, legislative coordinator for the Montana Congress of Parents and Teachers. I welcome the opportunity to address this committee on behalf of the Montana PTA which is the largest child advocacy organization in the state and whose parent organization is the largest child advocacy organization in the nation. The welfare and safety of children and youth is at the heart of all we do and say. It is one of our objects to secure adequate laws for the care and protection of children and youth in our state and nation.

Today I am here on behalf of the 10,000 members I represent to urge you to pass this bill. It was only after careful consideration of the matter that the delegates at the 1988 Montana PTA convention passed the resolution that supports banning corporal punishment from schools. This resolution is now the official position of the Montana PTA and gives us the authority to support action from our legislature to abolish corporal punishment from Montana schools.

Our children live in a very violent society and it is thought that allowing corporal punishment, which is viewed as an assault on a child, does not contribute to settling conflicts and disagreements through peaceful means. It is particularly important in the field of education that we find role models for appropriate behavior and for the proper way to resolve conflicts to be taught. Corporal punishment is just not a practice used in effective discipline to bring about long term positive behavior, but rather only contains the immediate bad behavior. The point of discipline is not to punish the child, but to show him what he has done wrong and offer him ways to solve the problem. Discipline should leave the child's dignity intact:

To be for abolishing corporal punishment is not to be against discipline in the classroom but rather for effective discipline that guides the student to self-discipline.

Irin A. Hyman, professor of school psychology and director of the National Center for the Study of Corporal Punishment and Alternatives in School says, "It is time for reasoned consideration about the sanctioned use of unnecessary violence against American school children." So let us reason together:

"* Fifty years of research has shown that corporal punishment is not effective. Rather than helping children control or change behavior, corporal punishment hurts children.

* It promotes aggression in the recipient.

* It teaches that force and violence are ways to solve problems.

* Since public schools are the only remaining government institution where the use of physical pain is allowed, it degrades the education profession and casts a pall of incredulity about the role of the school in teaching the process of democracy.

* When used excessively, it lowers classroom achievement and results in long term post-traumatic stress problems.

* It causes humiliation, anxiety and fear which impedes learning (Hyman)

SENATE EDUCATION
EXHIBIT NO. #1
DATE 1-23-91
BILL NO. 84

We care about all children. We care that the children most often hit at ^{school} are the ones abused at home. We care that boys, handicapped, and minorities- our most vulnerable victims- are hit more than others. We care that children are the only citizens in the U.S. upon whom corporal punishment may be administered.

Some here may feel that this is an issue best served at the community level. While all school districts are permitted to change their policies, and some have, these may be reversed very easily. It is felt therefore, that what is needed is a state law to prohibit corporal punishment.

The Montana PTA would never support- nor ask for your support- a proposal that would put teachers in jeopardy or lead to undisciplined classrooms. Alternatives methods of discipline are available. There is no need to continue to allow our youngest and most helpless citizens to be the only recipients of legal corporal punishment.

Please vote to support Senate Bill 24.

Thank you for your time and attention to this matter.

Ellen Bourgeau
1111 Eaton
Missoula, MT 59801

CORPORAL PUNISHMENT

- hereas, The first object of the PTA is to promote the welfare of children and youth in home, school, community and place of worship; and
- hereas, The third object of the PTA is to secure adequate laws for the care and protection of children and youth; and
- hereas, Corporal punishment has been abolished in many developed countries of the world and in several areas of the United States; and
- hereas, Even the U.S. Supreme Court has supported the legality and constitutionality of "reasonable force" while eliminating corporal punishment from many institutions other than schools; and
- hereas, Many school districts in Montana do not have policies prohibiting corporal punishment nor viable alternatives in place; and
- hereas, Many alternatives to corporal punishment as a disciplinary measure are available, and for the most part have a more beneficial effect; therefore be it
- RESOLVED That the Montana Congress of Parents and Teachers make available to units and councils information on corporal punishment laws, procedures, and alternatives; therefore be it further
- RESOLVED That the Montana Congress of Parents and Teachers establish a position opposing corporal punishment in accordance with the Health and Welfare Policies of the National PTA; and be it further
- RESOLVED That the Montana PTA through its local units and councils work with school districts to develop disciplinary procedures which will result in positive behavior of students and utilize positive alternative techniques.

SENATE EDUCATION
EXHIBIT NO. # / A
DATE 1-23-91
BILL NO. 84

TESTIMONY ON S.B. 84

an Act to Prohibit Corporal Punishment

Senate Education Committee - 1/23/91

Mr. Chairman, members of the Committee, my name is Judith H. Carlson representing the Montana Chapter, National Association of Social Workers. The Montana Chapter strongly endorses this bill and urges you to pass it into law. Discipline, yes. Order, yes. Beatings and physical punishments, no. It is clear that better alternatives exist. 90% of corporal punishment is inflicted by only 5% of educators. The other educators have found better ways.

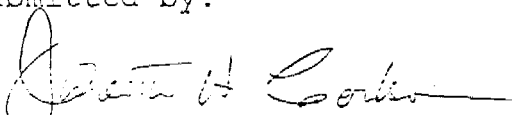
Social workers are involved in the investigation of neglect and abuse by parents of their children. Other social workers are involved in treatment of children who have been the victims of abuse. We see that corporal punishment can inflict bodily harm - bruises, broken bones. Even death. When teachers inflict physical punishment on children, it teaches children that it is o.k. to hit someone who is smaller and weaker. That is not what we want to teach our children. All our experience as social workers shows us that there is no benefit in the use of corporal punishment, but there is much long term harm.

There may be some arguments here today which sound reasonable on the face of it. One has to bring back to mind the central issue: do we want to beat our children into submission?

SENATE EDUCATION
EXHIBIT NO. 2
DATE 1-23-91

corporal punishment but yes to SB 8~~7~~. We appreciate your consideration of our concerns and opinions.

Submitted by:



Judith H. Carlson, ACSW



Montana Council for Maternal and Child Health

The Voice of the Next Generation
in Montana's State Capitol

2030 11th Ave., Suite 10

Helena, MT 59601

(406) 443-1674

TESTIMONY FOR THE SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Wednesday, January 23, 1991

Re: SB 84, to Prohibit Corporal Punishment of Students

The Montana Council for Maternal and Child Health, a non-profit public policy research, education, and advocacy organization, supports the provisions of SB 84, to prohibit the corporal punishment of students. The Council recognizes that corporal punishment not only creates a climate of fear and teaches students that force is an acceptable method of controlling the behavior of others, but creates actual physical harm endangering the health and in some cases the lives of children.

The American Academy of Pediatrics, which has long opposed the use of corporal punishment in schools, will publish a research and policy analysis of corporal punishment in the February 2, 1991 edition of Pediatrics. This study concludes that corporal punishment is not administered with equanimity: it is inflicted more on male, minority, rural, and small-school students than on female, white, urban and large-school students. Internationally, the article reports that the United States is one of only three nations in the developed world still allowing corporal punishment; we share this distinction with the Australian outback and South Africa.

According to the as-yet unpublished Pediatrics study, 1 million students are corporally punished in the United States each year, and 1-2%, or 10 to 20 thousand each year, require medical evaluation or treatment. Some actually die from their injuries. Many of them exhibit regression, rather than improvement in school behavior in the long run. And all of them, and their observant and impressionable peers, are exposed to the use of force as a problem-solving tactic in everyday life.

Montana cannot afford to let even one student be seriously injured at the hands of a teacher. We struggle daily with the results of child abuse in the home. We spend millions of dollars to protect children from relatives and strangers who seek to harm them. It is time to protect them in our schools. The banning of corporal punishment will encourage the use of tested and effective alternatives, so that Montana's next generation will be a healthier one.

The Council respectfully suggests the bill be amended to add the words "corporal punishment, or" following the word "uses" on page 3, line 19, to include the newly defined term in the misdemeanor.

Paulette Kohman, Executive Director

SENATE EDUCATION

EXHIBIT NO. 3

DATE 1-23-91

BILL NO. 84

DEPARTMENT OF FAMILY SERVICES



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF SB 84 AN ACT PROHIBITING CORPORAL PUNISHMENT OF A PUPIL

Submitted by Ann Gilkey
Chief Legal Counsel for the Department of Family Services

The Department of Family Services strongly supports SB 84 and the prohibition of corporal punishment of any pupil by a person employed by a school district. DFS prohibits the use of corporal punishment of students at both Pine Hills School and Mountain View School. Licensed foster parents are also prohibited from using corporal punishment on any foster child. It is the agency's philosophy that there are better, more effective and humane alternatives for discipline than use of physical force. Figures of authority in a school setting should not be granted legal sanction for the use of corporal punishment against Montana's youth. The Department of Family Services urges your support of SB 84.

SENATE EDUCATION

EXHIBIT NO. 4

DATE 1-23-91

BILL NO. 84

January 23, 1991

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. Our organization has more than 800 dues paying members- many of which are families with children.

We support Senate Bill 84 prohibiting corporal punishment in Montana schools for three reasons.

First, current law reinforces what we need to view as a questionable principle- that the solution to problems, that the resolution of conflict, is best met with violence. Young people who have been victimized by corporal punishment learn an early lesson about state sanctioned violence.

Second, in my two and a half years with the ACLU, we have received numerous complaints from parents with concerns about their kids being victimized by corporal punishment. There seems to be a disturbing pattern that the willful infliction of pain on students is administered in a discriminatory fashion. Minorities and low income people are often the ones who are the targets of corporal punishment. In my opinion, they have the least ability to be able to respond legally or to be able to affect political remedies.

Third, corporal punishment in most cases seems to be hastily applied. This legislation would provide incentives for school district employees to think twice before resorting to violence.

SB 84 deserves support not only because it prohibits inflicting corporal punishment on students, but also because it makes clear situations in which school district employees may use physical restraint when reasonable and necessary.

We urge your thoughtful consideration on this bill. Respectfully submitted,

Scott Crichton
Executive Director

SENATE EDUCATION
EXHIBIT NO. #5
DATE 1-23-91
BILL NO. 84

Date: January 20, 1991
To: Senate Education Committee
From: Evergreen Education Association
Subject: Senate Bill #824

We are writing to inform you of our dissatisfaction with Senate Bill 84.

The amendments are ambiguous. Who makes the judgement of what a "disturbance" is? We feel we would be under threat of lawsuits for merely escorting a child out of the room by holding his/her arm! Often a teacher will use this technique to bring a child back on task. This action might mean "willful infliction of pain" to someone.

Regarding amendment #7, who decides when physical restraint used is reasonable or necessary? Will we spend unnecessary time, effort, and dollars defending this language?

No one teacher wants to see a child spanked or beaten. However, we feel teachers need the latitude to physically restrain non-compliant students when necessary and not have this mis-construed as abuse.

Sincerely,

Jo Mahoney
Evergreen Education Association
Evergreen School District #50
Jo Mahoney, President

SENATE EDUCATION

EXHIBIT NO. #6

DATE 1-23

BILL NO. 84



Somers Public School

SCHOOL DISTRICT NO. 29
PHONE 857-3301
P.O. BOX 159
SOMERS, MONTANA
59932

JANUARY 23, 1991

TO: LEGISLATIVE EDUCATION COMMITTEE
FM: BERNARD ROSLING, SUPERINTENDENT
RE: CORPORAL PUNISHMENT-SENATE BILL 84

AS SUPERINTENDENT OF A KINDERGARTEN THROUGH EIGHTH GRADE SCHOOL IN SOMERS, MONTANA, I AM HERE TO EXPRESS OUR DEEP CONCERN ABOUT THE FUTURE IMPLICATIONS FOR EDUCATION IN MONTANA IF THIS BILL IS ADOPTED IN ITS PRESENT FORM. WE (THE STAFF AND MYSELF) CONCENTRATE OUR CONCERN WITH THE TERMS USED IN SECTION 1 ITEM 7. THE WORDS *REASONABLE OR NECESSARY* IN THE BILL'S PRESENT FORM WILL BE LEFT TO MANY AND VARIED INTERPRETATIONS. WHO WILL DECIDE THE DEGREE OF REASONABLENESS OR NECESSARINESS WHEN USING RESTRAINTS? THE MEDIA AND THE COURTS IS THE ANSWER.

WHEN THE MEDIA AND THE COURTS START CONTROLLING THE DEGREE TO WHICH RESTRAINT CAN BE APPLIED, CONTROL OF THE PUBLIC SCHOOLS WILL BE LOST. APPLIED CORPORAL PUNISHMENT SUCH AS SPANKINGS, HITTING AND ABUSE CAN AND SHOULD BE CONTROLLED BY THE COURTS, BUT NOT THE DEGREE TO WHICH RESTRAINT CAN BE APPLIED TO ELIMINATE A PROBLEM THROUGH DISCIPLINE.

WE ARE NOT AGAINST THE ELIMINATION OF APPLIED CORPORAL PUNISHMENT, BUT WE ARE AGAINST THE POSSIBILITY OF BEING QUESTIONED THROUGH THE MEDIA WHICH WOULD AUTOMATICALLY APPLY A LABEL TO THE PERSON AND THROUGH THE COURTS WHICH WILL OCCUPY A GREAT DEAL OF MONETARY RESOURCES AS WELL AS TIME AND PERSONAL RESOURCES. IT IS IMPORTANT TO NOTE THAT MISUSE OF CORPORAL PUNISHMENT IS NOT BE QUESTIONED ONLY THE WORDING ON TYPE OF RESTRAINT.

PLEASE CONSIDER CAREFULLY ANY ADOPTION OF A BILL THAT IS VAGUE AND LEFT OPEN TO MANY DIFFERENT INTERPRETATIONS THAT WILL ULTIMATELY DAMAGE THE EDUCATIONAL SYSTEM OF THE STATE OF MONTANA.

THANK YOU !

SENATE EDUCATION
EXHIBIT NO. #7
DATE 1-23-91
BILL NO. SB 84

DATE 1-23-91

COMMITTEE ON

Education

se sign:

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
LEN BOURGEOIS	Montana PTA	84	✓	
in Bourgeois	Emergreen School Dist	84		✓
6 Annungher	Col Falls Elementary	84		✓
16 Smith	Comers School Dist	84		✓
unad Rocky	MACSS	84	✓	
2 Mr. Kenna	Havre Schools	84		
Eric Florin	E. Hill Sch	84	—	
in Art				
in Art				
Juliette Korman	MT Council for Montanans with Disabilities	84	✓	
ANTHIA BUEHL	Montana Assn. School Psych	84	✓	
il Campbell	N/EA	84	✓	
Jani Smith	MRCOA	84	✓	
Judy Garrison	Montana Children's Alliance	84	✓	
Athy Leacat	E. H. PTA	84	✓	
Sharon Reardon	MFT	84	✓	
L. Eliza Beth Boeth	MT Children's Alliance	84	✓	
JUDITH CARLSON	MT CAP - Social Workers	84	✓	
Alan Nicholson	Parent-Make BPE	84	✓	
Ann Colkey	DFS	84	X	
Debra Kuhn	Vice Chair Helena Schools	84	✓	
Paula Long	OTD	84	✓	
Eileen Moran	MT ASSOC. OF School Teachers	84	✓	
Scott Crockett	ACLU MT	84	✓	
Carol J Farris	mother	84	✓	
Bruce W. Mewer	BSBA	84		
W. in SANDS	MT Women's Lobby	84	✓	
Shontz	mental health Assoc / MT	84	✓	

leave prepared statement with Secretary)

VOTE ON SB 84:

SENATOR FRITZ MOVED that the amendments on SB 84 DO PASS. The vote was unanimous. MOTION CARRIED.

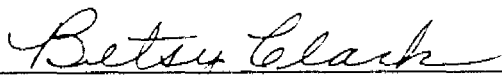
SENATOR WATERMAN MOVED that SB 84 DO PASS as amended. Five voted aye; Four no. Roll was called. MOTION CARRIED.

ADJOURNMENT

Adjournment At: 5:20 P. M.



SENATOR CHET BLAYLOCK, Chairman



BETSY CLARK, Secretary

CB/bc

ROLL CALL VOTE

SENATE COMMITTEE EDUCATION

Date 1-30-91 Bill No. 84 Time

Amendments

NAME	YES	NO
SENATOR BLAYLOCK, CHAIRMAN	✓	
SENATOR FRITZ, VICE-CHAIRMAN	✓	
SENATOR FARRELL	✓	
SENATOR BROWN	✓	
SENATOR PINSONEAULT	✓	
SENATOR HAMMOND	✓	
SENATOR YELLOWTAIL	✓	
SENATOR NATHE	✓	
SENATOR WATERMAN	✓	

Secretary

Chairman

Motion: Senator Pinsoneault moved that
amendments be adopted.
SB 84. Vote was unanimous.
Do PASS.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 31, 1991

MR. PRESIDENT:

We, your committee on Education and Cultural Resources having had under consideration Senate Bill No. 84 (first reading copy -- white), respectfully report that Senate Bill No. 84 be amended and as so amended do pass:

1. Title, line 10.

Following: "RESTRAINT;"

Insert: "TO PROVIDE AN AFFIRMATIVE DEFENSE;"

2. Page 1, line 18.

Following: "penalty"

Insert: " -- defense"

3. Page 2, line 8.

Following: "means"

Strike: "the willful infliction of"

Insert: "knowingly and purposely inflicting"

4. Page 2, lines 14 and 15.

Following: "restraint"

Insert: ", defined as the placing of hands"

Following: "pupil"

Strike: "as"

Insert: "in a manner that"

5. Page 2, line 21.

Following: "pupil:"

Strike: "or"

Insert: "(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or"

Renumber: subsequent subsection

6. Page 2, lines 23 through 25.

Following: "(b)"

Strike: the remainder of line 23 through "section" on line 25

Insert: "Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does not constitute corporal punishment as long as the restraint is reasonable and necessary"

7. Page 3, line 10.

Following: "trustees"

Insert: "and the county superintendent"

8. Page 3, line 14.

Following: "principal,"

Strike: "or"

9. Page 3, line 15.

Following: "trustees"

Insert: ", or the county superintendent"

10. Page 3, line 19.

Following: "uses"

Insert: "corporal punishment or"

11. Page 3, line 24.

Following: line 23

Insert: "(8) A person named as a defendant in an action brought under this section may assert as an affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined by the trier of fact."

Signed

Chet Blaylock

Chet Blaylock, Chairman

LR 1/31/91

Amd. Coord.

SB 1/31 1:35

Sec. of Senate

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By Chairman Ted Schye, on March 14, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Ted Schye, Chairman (D)
Ervin Davis, Vice-Chairman (D)
Steve Benedict (R)
Ernest Bergsagel (R)
Robert Clark (R)
Vicki Cocchiarella (D)
Fred "Fritz" Daily (D)
Alvin Ellis, Jr. (R)
Gary Feland (R)
Gary Forrester (D)
Floyd "Bob" Gervais (D)
H.S. "Sonny" Hanson (R)
Dan Harrington (D)
Tom Kilpatrick (D)
Bea McCarthy (D)
Scott McCulloch (D)
Richard Simpkins (R)
Barry "Spook" Stang (D)
Norm Wallin (R)
Diana Wyatt (D)

Staff Present: Eddye McClure, Legislative Council
Dianne McKittrick, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: CHAIRMAN SCHYE announced HB 940 would be researched in a subcommittee consisting of REP. STANG, Chair, REP. COCCHIARELLA and REP. HANSON.

HEARING ON SB 84

Presentation and Opening Statement by Sponsor:

SENATOR JUDY JACOBSON, Senate District 36, Butte, said SB 84 would define corporal punishment, abolish its use in schools and more clearly define what is meant by "restraint of a child". Physical abuse is banned in prisons, psychiatric hospitals, military schools, and the Department of Family Services does not

allow its use in Mountain View School, Pine Hills School or its foster homes. Many parents and teachers are finding alternative methods such as "time-out" far more effective than a hand applied to a back-side.

There are few places where inflicting pain is an acceptable disciplinary method, and Montana schools stand out as an exception. Every state permits teachers the use of force for self protection or to restrain a violent child whose behavior is a threat to the teacher, other children, or themselves. Such is the case with SB 84. Corporal punishment is ineffective as shown by research compiled by the National PTA and in fact teaches children to use violence to solve problems. This type of discipline may suppress negative behavior temporarily, but over a period of time may increase aggression, delinquency, and vandalism. It promotes the attitude of "go ahead, hit me and get it over with". Corporal punishment also lets students off the hook by not requiring them to take responsibility for their actions. Students are not taught how to judge between right and wrong.

A clearly defined disciplinary plan, laid out in the beginning of the academic year, would be a far more positive approach since students would have a greater understanding and respect for the guidelines. If preschool children can understand "time out", school children can understand school rules and their consequences. The most effect discipline in all areas of human interaction is rooted in fairness, justice and concern for individual rights.

Proponents' Testimony:

Phil Campbell, Montana Education Association, (MEA), said it is time the state goes on record that the intentional inflicting of pain is detrimental to Montana's youth and is not public policy. SB 84 provides sufficient protection for those working in the schools and provides for the use of physical restraint when necessary to maintain orderly conduct.

John Malee, Montana Federation of Teachers, (MFT), stated support for SB 84.

Nancy Cooper-Smith, Office of Public Instruction, (OPI), said corporal punishment interferes with the process of learning. It also interferes with a child's optimal development as a socially responsible adult. It is important to consider the emotional and physical health of Montana's youth and to support the adoption of alternative methods for the achievement of self-control and responsible behavior. Corporal punishment interferes with a learning environment and teaches children that hitting is an acceptable way of solving problems. It also teaches them that violence is permissible, pitting the weak against the strong. The OPI is determined to work with Montana educators to develop effective alternatives to corporal punishment.

Debra Kehr, Vice-Chair, Helena School Board, stated hope that legislators, as representatives of the state, send a positive message regarding conflict resolution to students, families and communities. If physical harm is necessary to maintain control, there is no control!

Ann Gilkey, Chief Legal Counsel, Department of Family Services, submitted written testimony. EXHIBIT 1

Cliff Murphy, Mental Health Association of Montana, Chair, Montana Committee for the Emotionally Disturbed, stated support for SB 84.

Kathy McGowan, Montana Residential Childcare Association, (MRCCA), said the MRCCA is comprised of 24 facilities including shelter-care, group homes and residential treatment facilities. The MRCCA targeted SB 84 as a high priority on its short list of legislative priorities.

Judy Garrity, Montana Children's Alliance, presented written testimony. EXHIBITS 2 and 3

Eileen Morgan, Helena School Psychologist, said the body of research has shown corporal punishment is not an effective disciplinary method in school. Research has also shown there are effective alternative methods for schools to incorporate and many Montana schools are currently taking advantage of them. Corporal punishment not only affects the student being disciplined, but also affects those witnessing the act.

Dr. Thomas Carlin, Helena School Psychologist, said it is possible to control negative behavior without corporal punishment. Children who are severely emotionally disturbed, developmentally disabled, or those with conduct and character disorders can be controlled successfully without corporal punishment. Literature since 1983 finds corporal punishment has little or no positive effect as far as human behavior. A serious reduction in self-esteem results from its use and many children either fragile or "at risk" are open to the extreme possibility of suicide. There is the very real possibility of an escalation of negative behaviors and psychological processing disorders such as heightened anger, revenge, anxiety and school phobia resulting from corporal punishment.

Elizabeth Roeth, Director, Healthy Mothers-Healthy Babies, stated support for SB 84.

Kay McKenna, Montana Association County School Superintendents, (MACSS), said with the strengthening of the definition, the MACSS supports SB 84.

Jesse Long, School Administrators of Montana, (SAM), said the addition of language that allows for reasonable and necessary restraint makes SB 84 very workable.

Scott Creighton, Director, American Civil Liberties Union of Montana, presented written testimony. EXHIBITS 4 and 5

Kathy Seacat, Montana PTA, presented written testimony. EXHIBIT 6

Mike Males, Children's Trust Fund Board, stated support for SB 84.

Opponents' Testimony: None

Questions From Committee Members:

REP. WALLIN asked SEN. JACOBSON if an incorrigible says, "you can't touch me", how would the teacher respond in lieu of this legislation. SEN. JACOBSON answered there are a number of tools available to handle an unruly student and many Montana teachers are currently using them.

REP. SIMPKINS asked SEN. JACOBSON if the truancy laws need to be strengthened along with the procedure for dismissing troublesome students. This should be discussed along with the corporal punishment issue. SEN. JACOBSON agreed there are many problems in schools with truancy that need to be addressed. SB 84 is here however, to stand on its own.

Closing by Sponsor:

SEN. JACOBSON thanked the committee and urged positive consideration of SB 84.

HEARING ON SB 320

Presentation and Opening Statement by Sponsor:

SENATOR HARRY FRITZ, Senate District 28, Missoula, said SB 320 would establish the campus at the University of Montana as the state arboretum.

Proponents' Testimony:

Mark Behan, Professor Emeritus of Botany, University of Montana, submitted various written testimony. EXHIBIT 7

Patrick McCleary, Associated Students, University of Montana, stated support for SB 320.

Opponents' Testimony: None

Questions From Committee Members:

REP. SIMPKINS asked SEN. FRITZ if the Board of Regents can make the appointment without legislation. SEN. FRITZ said neither the board nor legal counsel for the Legislative Council were sure.

HOUSE OF REPRESENTATIVES

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3-14-91

NAME	PRESENT	ABSENT	EXCUSED
REP. TED SCHYE, CHAIRMAN	✓		
REP. ERVIN DAVIS, VICE-CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. ERNEST BERGSAGEL	✓		
REP. ROBERT CLARK	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. FLOYD "BOB" GERVAIS	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAN HARRINGTON	✓		
REP. TOM KILPATRICK	✓		
REP. BEA MCCARTHY	✓		
REP. SCOTT MCCULLOCH	✓		
REP. RICHARD SIMPKINS	✓		
REP. BARRY "SPOOK" STANG	✓		
REP. NORM WALLIN	✓		
REP. DIANA WYATT	✓		

DEPARTMENT OF FAMILY SERVICES

EXHIBIT

#1

DATE 3-14-91

SB 84



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

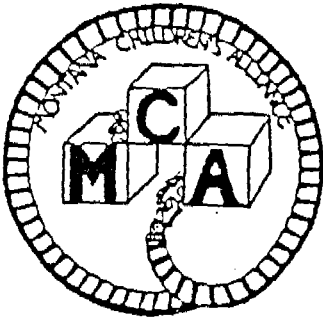
March 14, 1991

TESTIMONY IN SUPPORT OF SB 84
AN ACT PROHIBITING CORPORAL PUNISHMENT OF A PUPIL

Submitted by Ann Gilkey
Chief Legal Counsel for the Department of Family Services

The Department of Family Services strongly supports SB 84 and the prohibition of corporal punishment of any pupil by a person employed by a school district. DFS prohibits the use of corporal punishment of students at both Pine Hills School and Mountain View School. Licensed foster parents are also prohibited from using corporal punishment on any foster child. It is the agency's philosophy that there are better, more effective and humane alternatives for discipline than use of physical force. Figures of authority in a school setting should not be granted legal sanction for the use of corporal punishment against Montana's youth.

The Department of Family Services urges your support of SB 84.



MONTANA CHILDREN'S

DATE 3-14-91
ALLIANCE SB 84

P.O. Box 876, Helena, Montana 59624 (406) 449-8611

TESTIMONY FOR THE HOUSE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Thursday, March 14, 1991

RE: SB 84, to Prohibit Corporal Punishment of Students

The Montana Childrens Alliance is in strong support of abolishing corporal punishment in the schools and has included this issue in the 1991 Children's Agenda. The Children's Agenda has, in turn, been supported by forty-seven organizations and associations.

Things have changed since many of us were children. During the 1950's, physical punishment in family life (such as spanking or hand-slapping) and physical punishment in schools were widely accepted forms of discipline.

Societal knowledge and awareness has grown immensely during the past decades. There is now an extensive body of literature which demonstrates that corporal punishment is not only ineffective but counterproductive in the long run.

We now know that the use of corporal punishment teaches children that violence is the way to solve problems and that "might is right."

- Corporal punishment occurs more frequently in the primary and intermediate levels when children are smaller than the adults in charge.
- Boys are hit much more frequently than girls, socializing them to be more physically aggressive than their female peers.
- Poor white children and minority group children are four to five times more frequently hit than middle and upper class white children, again underscoring the message that those in power positions have the right to physically abuse those who are not.
- There is evidence that corporal punishment creates resentment and vindictiveness within students and is a cause of school vandalism.

Research substantiates that certain non-punitive approaches to discipline can be extremely effective -- approaches which treat students with dignity, allow them to retain their self esteem, teach them that they are responsible for their own behavior, and that resolution to problems can come about through non-violent methods.

As adults we do not like nor do we respect those who rule through force and intimidation. Children who are ruled this way do not develop the internal

Children's Agenda



Montana Council
for Maternal and Child Health

The Voice of the Next Generation
in Montana's State Capitol

EXHIBIT #3
DATE 3-14-91
SB 84

2030 11th Ave., Suite 10

Helena, MT 59601

(406) 443-1674

TESTIMONY FOR THE HOUSE EDUCATION AND CULTURAL
RESOURCES COMMITTEE

March 14 ~~Friday, March 8, 1991~~

Re: SB 84, to Prohibit Corporal Punishment of Students

The Montana Council for Maternal and Child Health, a non-profit public policy research, education, and advocacy organization, supports the provisions of SB 84, to prohibit the corporal punishment of students. The Council recognizes that corporal punishment not only creates a climate of fear and teaches students that force is an acceptable method of controlling the behavior of others, but inflicts actual physical harm endangering the health and in some cases the lives of children.

The American Academy of Pediatrics, which has long opposed the use of corporal punishment in schools, has published a research and policy analysis of corporal punishment in the February 2, 1991 edition of Pediatrics. This study concludes that corporal punishment is not administered with equanimity: it is inflicted more on male, minority, rural, and small-school students than on female, white, urban and large-school students. Internationally, the United States is one of only three nations in the developed world still allowing corporal punishment; we share this distinction with the Australian outback and South Africa.

According to the Pediatrics study, 1 million students are corporally punished in the United States each year, and 1-2%, or 10 to 20 thousand each year, require medical evaluation or treatment. Some actually die from their injuries. Many of them exhibit regression, rather than improvement in school behavior in the long run. And all of them, and their observant and impressionable peers, are exposed to the use of force as a problem-solving tactic in everyday life.

Montana cannot afford to let even one student be seriously injured at the hands of a teacher. We struggle daily with the results of child abuse in the home. We spend millions of dollars to protect children from relatives and strangers who seek to harm them. It is time to protect them in our schools. The banning of corporal punishment will encourage the use of tested and effective alternatives. These alternatives are already successful in disciplining institutionalized problem youth. If they work at Pine Hills and Mountain View, they will work in our public schools.

Thank you for your attention.

Paulette Kohman

Paulette Kohman
Executive Director



OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086

442 2265

EXHIBIT 777
DATE 3-14-91
#8 SB 84

March 8, 1991

Mr. Chairman, Members of the Committee:

State Office
335 Stapleton Building
Billings, Montana 59101

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. Our organization has more than 800 dues paying members- many of which are families with children. I am here today to rise in support for SB 84.

We support Senate Bill 84 prohibiting corporal punishment in Montana schools for three reasons.

First, current law reinforces what we need to view as a questionable principle- that the solution to problems, that the resolution of conflict, is best met with violence. Young people who have been victimized by corporal punishment learn an early lesson about state sanctioned violence.

Second, in my two and a half years with the ACLU, we have received numerous complaints from parents with concerns about their kids, alleging that they have been victimized by corporal punishment. In the occasion that these allegations are true, there seems to be a disturbing pattern that the willful infliction of pain on students is administered in a discriminatory fashion. Minorities and low income people are often the ones who are the targets of corporal punishment. In my opinion, they have the least ability to be able to respond legally or to be able to affect political remedies.

Third, corporal punishment in most cases seems to be hastily applied. This legislation would provide clarity about the boundaries and limits for using force with students and would provide incentives for school district employees to think twice before resorting to violence.

SB 84 deserves support not only because it prohibits inflicting corporal punishment on students, but also because it makes clear situations in which school district employees may use physical restraint when reasonable and necessary.

We urge your thoughtful consideration on this bill. Respectfully submitted,

Scott Crichton

Scott Crichton
Executive Director

"Eternal vigilance is the price of liberty"

TESTIMONY ON S.B. 84

an Act to Prohibit Corporal Punishment

House Education Committee March 14, 1991

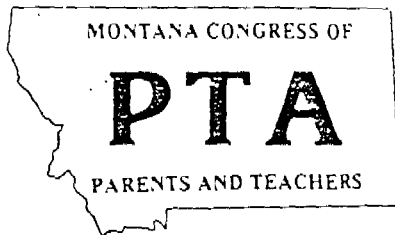
~~Mr.~~ Chairman, members of the Committee, my name is Judith H. Carlson representing the Montana Chapter, National Association of Social Workers. The Montana Chapter strongly endorses this bill and urges you to pass it into law. Discipline, yes. Order, yes. Beatings and physical punishments, no. It is clear that better alternatives exist. 90% of corporal punishment is inflicted by only 5% of educators. The other educators have found better ways.

Social workers are involved in the investigation of neglect and abuse by parents of their children. Other social workers are involved in treatment of children who have been the victims of abuse. We see that corporal punishment can inflict bodily harm - bruises, broken bones. Even death. When teachers inflict physical punishment on children, it teaches children that it is o.k. to hit someone who is smaller and weaker. That is not what we want to teach our children. All our experience as social workers shows us that there is no benefit in the use of corporal punishment, but there is much long term harm.

There may be some arguments here today which sound reasonable on the face of it. One has to bring back to mind the central issue: do we want to beat our children into submission? We say no to corporal punishment but yes to SB 84. We appreciate your consideration of our concerns and opinions.

Submitted by:

Judith H. Carlson, ACSW



TESTIMONY S.B. 84

House Education & Cultural
Resources Committee

EXHIBIT #6
DATE 3-14-91
~~HB~~ SB 84

March 14, 1991

Chairman Schye and members of the House Education and Cultural Resources Committee

I am Kathy Seacat, member of the Helena Area Legislative Team for the Montana Congress of Parents and Teachers and a representative for our 10,000 members. Today I am here to urge you to support Senate Bill 84.

The Montana PTA is the largest child advocacy organization in the state and our parent organization, the National PTA, is the largest child advocacy organization in the nation. One of our objects is to secure adequate laws for the care and protection of children and youth in our state and nation. In 1988, the Montana PTA delegate convention passed a resolution that supports banning corporal punishment in Montana schools (copy attached).

Irin A. Hyman, Professor of School Psychology and Director of the National Center for the Study of Corporal Punishment and Alternatives in Schools, has stated that "After fifty years of research, corporal punishment is not effective. Corporal punishment hurts children. Corporal punishment promotes aggression in the recipient (which increases vandalism in schools). Corporal punishment teaches that force and violence are ways of solving problems. Corporal punishment causes humiliation, anxiety and fear which impede the learning process."

It is important that our schools are role models for appropriate behavior. Montana schools should set the highest possible standards. Corporal punishment does not make children accountable for their choices. It is a quick fix. Dr. Delores Inniss, Principal, Hungerford Elementary School, Eatonville, Florida, has stated "Children would rather be paddled and then move on. It hurts for just a minute, and then the student can forget about the whole thing. It's easy. And quick. They hate discipline that makes them accountable for their choices." The point of discipline is not to punish the child, but to show him what he has done wrong and offer him ways to solve the problem. Discipline should leave the child's dignity intact.

As members of the Montana PTA, we promote the welfare of all children and youth in our schools. We feel that a state law is needed to prohibit corporal punishment. We think Senate Bill 84 is this needed state law. Not only does it protect the welfare of Montana's public school children by prohibiting corporal punishment, it also protects school staff by providing guidelines for use of physical restraint instead of corporal punishment.

Kathy Seacat
2472 Spokane Creek Road
East Helena, MT 59635

CORPORAL PUNISHMENT

- Whereas, The first object of the PTA is to promote the welfare of children and youth in home, school, community and place of worship; and
- Whereas, The third object of the PTA is to secure adequate laws for the care and protection of children and youth; and
- Whereas, Corporal punishment has been abolished in many developed countries of the world and in several areas of the United States; and
- Whereas, Even the U.S. Supreme Court has supported the legality and constitutionality of "reasonable force" while eliminating corporal punishment from many institutions other than schools; and
- Whereas, Many school districts in Montana do not have policies prohibiting corporal punishment nor viable alternatives in place; and
- Whereas, Many alternatives to corporal punishment as a disciplinary measure are available, and for the most part have a more beneficial effect; therefore be it
- RESOLVED That the Montana Congress of Parents and Teachers make available to units and councils information on corporal punishment laws, procedures, and alternatives; therefore be it further
- RESOLVED That the Montana Congress of Parents and Teachers establish a position opposing corporal punishment in accordance with the Health and Welfare Policies of the National PTA; and be it further
- RESOLVED That the Montana PTA through its local units and councils work with school districts to develop disciplinary procedures which will result in positive behavior of students and utilize positive alternative techniques.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

1062

EDUCATION & CULTURAL RESOURCES

COMMITTEE

BILL NO. SB 84

DATE 3-14-91

SPONSOR(S) Jacobson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Nancy Coopersmith	OPI	✓	
Carol Harris	self	✓	
Cliff Murphy	MHAM	✓	
Phil Campbell	NTEA	✓	
Jan Wright	self	✓	
Ann Gilkey	DFS	X	
John Malee	M.F.T.	X	
Paulette Kohman	Int Council for mat + Child Aeth	✓	
Scott Erickson	ALL	✓	
Kathy Seacat	Montana PTA	✓	
Judith Carlson	MT CAPT NASW	✓	
Jen W Long	S.A.M.	✓	
Gudy Garrity	Mt. Children's Alliance	✓	
Debra M. Kehr	Helena Public Schools	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXECUTIVE ACTION ON HB 960

Motion/Vote: REP. MCCULLOCH moved HB 960 BE TABLED. Motion CARRIED unanimously.

EXECUTIVE ACTION ON SB 320

Motion/Vote: REP. DAILY moved SB 320 BE CONCURRED IN. Motion CARRIED unanimously.

EXECUTIVE ACTION ON SB 84

Motion: REP. MCCULLOCH moved SB 84 BE CONCURRED IN.

Discussion: REP. ELLIS said he had occasion to speak with three superintendents who are opposed to SB 84. They feel there are many forms of effective discipline and paddling is one of them.

REP. MCCULLOCH said corporal punishment has been proven to be a harmful, unnecessary tool that is obsolete. There is never any reason to physically hit a student. There are safeguards in the bill to take care of restraining for protection.

REP. KILPATRICK said perhaps 95% of students accept the paddle but the other 5% may be devastated, making the procedure totally out of line in as far as school discipline.

REP. WALLIN asked if shaking a student is also considered corporal punishment and REP. MCCARTHY answered under Montana law a teacher can not touch a child.

Vote: Motion CARRIED 16 to 4 with REPS. CLARK, ELLIS, SIMPKINS AND WALLIN voting no.

HEARING ON SB 456

Presentation and Opening Statement by Sponsor:

SENATOR BILL YELLOWTAIL, Senate District 50, Wyola, said SB 456 would permit the Montana Board of Investments to invest funds to help the Pryor School District through a critical period of rebuilding. Currently, districts can borrow for capital expenditures only. This legislation would expand the board's ability in existing law to consider applications for general purpose loans. SEN. YELLOWTAIL presented an amendment to the bill. EXHIBIT 4

Proponents' Testimony:

Chip Erdmann, Montana Rural Education Association and representing the Pryor School District, said SB 456 allows the State Board of Investments broader discretion in considering loan applications from school districts or other governmental entities. Mr. Erdmann said the Board of Investments is a board

HOUSE OF REPRESENTATIVES

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3-19-91

NAME	PRESENT	ABSENT	EXCUSED
REP. TED SCHYE, CHAIRMAN	✓		
REP. ERVIN DAVIS, VICE-CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. ERNEST BERGSAGEL	✓		
REP. ROBERT CLARK	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. FLOYD "BOB" GERVAIS	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAN HARRINGTON	✓		
REP. TOM KILPATRICK	✓		
REP. BEA MCCARTHY	✓		
REP. SCOTT MCCULLOCH	✓		
REP. RICHARD SIMPKINS	✓		
REP. BARRY "SPOOK" STANG	✓		
REP. NORM WALLIN	✓		
REP. DIANA WYATT	✓		

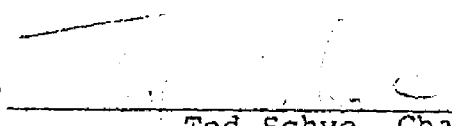
10:05
3-20-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that Senate Bill 84 (third reading copy -- blue) be concurred in .

Signed: 
Ted Schye, Chairman

Carried by: Rep. McCarthy